

We saw no basis whatsoever for disturbing these findings of fact on the part of the learned trial judges, and the appellant accordingly failed on his first ground of appeal.

The only other ground upon which it was sought to upset the conviction was that the appellant had not formed a common intention, with Ronnie, to murder the deceased. Counsel for the appellant conceded that, whether or not a common intention was formed was a matter of fact for determination by the trial judges. However, he argued that the proper finding would have been that the appellant's intention was from the outset, to steal his employers' oil, and no more, and that this intention did not extend at any time to an intention to kill the deceased. The trial judges had therefore been wrong to conclude, on the evidence, that a common intention to murder had been formed.

We were unable to agree. The trial judges had in mind that common intention is to be inferred from surrounding circumstances, and the conduct of the parties. While accepting that when the appellant had sought to drug the deceased he had done so only to facilitate the theft of the oil, they disbelieved the appellant when he said that he stood by, for between five and six minutes, during Ronnie's first attempt to strangle the deceased with a towel, because he was shocked and frightened. The trial judges concluded, as they were entitled to on the evidence, that the appellant also wanted the deceased dead.

Were that not enough, the appellant had handed to Ronnie the rope that eventually dispatched the deceased. Although he claimed in his evidence that he did not know what Ronnie wanted the rope for, and later, that he thought Ronnie intended to use it to tie the hands and feet of the deceased, his evidence, which on the face of the grounds of decision was carefully weighed, was disbelieved. The judges took account of the fact that after Ronnie entered the toilet with the rope, the appellant closed the toilet door and braced himself against it because the wooden latch had become detached. The appellant heard the struggling inside, followed by a silence for about ten minutes before he was asked by Ronnie to stand clear of the door so that they could both dispose of the body. The judges bore in mind that, in his s 121(6) statement, the appellant had said that, upon handing Ronnie the rope: 'He (Ronnie) took the rope and went inside the toilet to use it to strangle the deceased'.

In the event, the learned trial judges concluded beyond reasonable doubt, that the appellant had handed Ronnie the rope in order for him to strangle the deceased. A common intention had arisen between them to murder the deceased when Ronnie had attempted earlier to strangle the deceased with the towel. That attempt having failed, and the oil having been successfully

pumped out of SB 167G, the appellant had actively assisted Ronnie to murder the deceased, and dispose of his body overboard.

There was no basis upon which we could possibly conclude that the learned trial judges' finding as to the existence of common intention was unjustified. There was ample evidence to support it. The appellant's second ground of appeal, like his first, therefore failed.

Appeal dismissed.

Solicitors: *MPD Nair & Co.*

Reported by *Ng Sheau Jiu*

Public Prosecutor v Tsang Yuk Chung

HIGH COURT (SINGAPORE) – CRIMINAL CASE NO 31 OF 1986
CHAN SEK KEONG AND CHUA JJ
20 SEPTEMBER 1988

Criminal Law – Murder – Intention – Injury intended sufficient in the ordinary course of nature to cause death – Whether there was grave and sudden provocation – Sudden fight – Penal Code (Cap 103, 1970 Ed), ss 300 & 302

Criminal Procedure – Cautioned statement – Admissibility of – Criminal Procedure Code (Cap 68, 1985 Ed), s 122(6)

In this case the accused was charged with murder under s 302 of the Penal Code. The evidence showed that there had been previous quarrels between the accused and the deceased who were both working on a ship. On the morning of the day of the incident there had been a quarrel between them and the deceased had scolded, threatened and chased the accused with a knife. The deceased did not retaliate immediately. Later in the day the accused went to his cabin and brought a knife to the pantry to stab the deceased. There was a struggle between them as the deceased was trying to prevent the accused from stabbing him. The accused stabbed the deceased causing the injuries which led to his death. A statement was recorded from the accused and after a trial within a trial this was admitted in evidence. It was contended on behalf of the accused (a) that the defence had created a reasonable doubt as to whether the accused had intended to kill the deceased or to cause him injury as was sufficient in the ordinary course of nature to cause death, (b) that the deceased was deprived of the power of self-control by grave and sudden provocation when he caused the death of the deceased who gave the provocation, and (c) that the accused had killed the deceased without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Held, convicting the accused:

(1) Having regard to the evidence in the trial within a trial, the court was satisfied that the charge and the warning had been read and explained to the accused and/or at any rate that he understood both the charge and the warning. It was clear from the accused's own testimony that his real complaint was that certain parts of his cautioned statement had not been recorded accurately.

(2) The court admitted the cautioned statement as a voluntary statement but without prejudice to the accused's position that the cautioned statement might be inaccurate in the respects alleged by the accused.

(3) The stabbing in this case was a calculated and deliberate act. The stabbing was done with the intention of causing bodily injury to the deceased and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death.

(4) The accused in this case did not behave as if he had been provoked. He did not lose his self-composure much less his self-control. Instead, he decided to teach the deceased a lesson. The accused had therefore not discharged the burden of proving exception 1 to s 300 on a balance of probabilities.

(5) The evidence showed that there was no sudden fight when the stabbing took place. The accused waited in the pantry for the deceased to appear in order to stab him. Furthermore the accused took undue advantage of the deceased, who was then unarmed, by concealing a knife in his pocket and when the deceased came into the pantry, attacked him by surprise.

(6) The prosecution had proved beyond a reasonable doubt under s 300(c) of the Penal Code that the accused had intended to stab the deceased and that the injury intended was sufficient in the ordinary course of nature to cause death. The accused was therefore convicted.

Cases referred to

- 1 *PP v Chan Sway Beng* [1988] 2 MLJ 405 (distd)
- 2 *PP v Visuvanathan* [1978] 1 MLJ 159 (folld)
- 3 *Saraj Din v Emperor* (1935) 36 Cr LJ 306; AIR 1934 Lahore 600 (refd)
- 4 *Des Raj v Emperor* (1928) 29 Cr LJ 454 (refd)
- 5 *Mohamed Kunjo v PP* [1978] 1 MLJ 51 (folld)

Legislation referred to

Criminal Procedure Code (Cap 68, 1985 Ed) s 122(6)
Penal Code (Cap 103, 1970 Ed) ss 300(c), 302

Lee Siu Kin (Deputy Public Prosecutor) for the Public Prosecutor.

Thomas Chan for the accused.

Cur Adv Vult

Chua J (delivering the judgment of the court): The accused, Tsang Yuk Chung, was charged as follows:

That you Tsang Yuk Chung on or about 15 October 1985 at about 11.20 am at the pantry/gallery room on board the vessel 'Kilmun' berthed alongside berth J6, Jurong Port, Singapore, did commit murder by causing the death of one Leung Sang, and you have thereby committed an offence punishable under s 302 of the Penal Code (Cap 103, 1970 Ed).

At the end of a seven-day trial we convicted him on the said charge. We now give our reasons.

The evidence adduced by the prosecution was as follows. At about 11.25 am on 15 October 1985, one Yong Ah Watt (PW4) was working on board the vessel 'Kilmun'. He was repairing a water cooler which was situated in the passage way of the poop deck. Next to but on the other side of the passage way was the pantry. The

A door of the pantry was a short distance away. At that time, the pantry door was open. The galley was next to and on the other side of the pantry. It was very quiet at that time as the ship's engine was not on. As Yong felt hungry, he looked at his watch and saw that it was 11.30 am. Then he heard a loud voice shouting for help ('kow mian' in Cantonese). The shout came from the galley. B Yong then proceeded to the pantry. As he was about to enter the pantry, he saw the accused walking out of the door. The accused walked past Yong on the left. Yong also saw the junior steward (later identified as Sum Wai Mun) who was standing near the centre of the door. C Yong heard the second cook, Leung Sang, telling Sum to send for help. He was able to speak clearly. Leung Sang was covering his stomach with his hands. Blood was coming out on the left side. He was then standing near a serving table at the far end of the pantry next to the crew mess. Yong saw Sum running up the staircase which was D just outside the door of the pantry.

When the accused left the pantry, he turned left and walked along the passage way leading to his cabin. Yong followed the accused at a short distance. The accused then turned right followed by Yong, who was about 25 feet away. Yong saw the accused opening the door of his cabin with his left hand. Yong also saw the accused E holding something with a round handle in his right hand. After the accused had entered his cabin and closed the door, Yong then went to telephone for an ambulance. After that, he came back to the pantry and found Leung Sang sitting on the floor against the wall in front of the F galley. He was dead. There were also many crew members, including the captain, in the pantry.

Yong, who had joined the ship about ten days before the incident, also testified that he had heard Leung Sang and the accused quarrelling on two or three occasions. They had arguments on trivial things: each had com- G plaints to make about the other concerning their work.

Lee Hoi Mun (PW3), also testified that he was a fitter on board the vessel since July 1985. He knew both the accused and the deceased. He had seen them quarrel on two occasions over their work. Their first quarrel H started in September 1985 on where the meat should be kept. The second quarrel which was more serious was also about food. The quarrel started when the deceased was in the pantry while the accused was in the crew mess. The deceased came into the crew mess. He wanted to fight the accused and Lee had to restrain him from doing I so.

On the day of the incident, Lee had woken up at about 10 am as he was on medical leave. He went into the pantry to make some toast. The accused was then making salad. He told Lee not to dirty the place. Lee also heard the accused telling him not to restrain him the next time he wanted to fight and that this time he wanted to kill

someone. Lee thought that the accused was joking. After Lee had eaten his breakfast in the crew mess, he went back to his room to sleep.

Corporal G Muniandi (PW6) was the first policeman who boarded the vessel. He arrived at about 11.40 am and was taken to the pantry by the captain. He saw the deceased in a sitting position next to the door to the galley. He told the captain not to remove anything. The ambulance officer arrived at about 11.50 am. She checked the body and pronounced Leung Sang dead. After questioning the captain and the chief steward, Corporal Muniandi was led to the accused's cabin. He knocked at the door and said, 'Police here, open the door.' The accused opened the door and stepped backwards. Corporal Muniandi went into the cabin. He questioned the accused who replied, 'I want no trouble. I follow you.' His voice was clear. The accused was steady and relaxed but smelt of beer. Corporal Muniandi took the accused's seaman's book from inside a drawer of the table next to the bed. The book confirmed the accused's identity. By that time another police constable had arrived with handcuffs. Corporal Muniandi took the handcuffs and put them on the accused's hands behind his back. Subsequently Corporal Muniandi and another police sergeant (Sergeant Mohideen) searched the accused's cabin but found nothing incriminating. There was a beer can on the table in the cabin. Corporal Muniandi also saw the knife which he had earlier found in the drawer. Subsequent investigations showed that this knife had not been used in the stabbing.

At about 12.10 pm, the accused was taken to the lock-up in the police post near to where the vessel was berthed. He was there until 2.03 pm when he was escorted by two policemen to Changi Prison Hospital for a medical examination. Upon their arrival, the policemen were made to wait for about an hour and was then told that the accused should be examined at Changi Hospital. They then escorted the accused to Changi Hospital, arriving at about 3.57 pm. The accused was examined at 4.05 pm. At about 4.35 pm the accused was escorted to PSA Police Headquarters. They arrived at 5.02 pm and the accused was sent to the lock-up.

The medical examination did not reveal any injuries on the accused. His blood was taken for alcohol analysis. No ethanol or methanol was detected in his blood.

Dr Clarence Tan (PW1), a forensic pathologist, had on 15 October 1985 examined the body of the deceased on board the vessel. The following day he performed an autopsy on the deceased. He testified that the deceased had died of a single stab wound at the right side of the anterior abdominal wall region. The wound measured 6.5cm by 2.8cm when lax but 7cm with the margins of the wound approximated together. The lower edge of the wound was split and showed fish-tailing. This meant that

A the knife did not go straight into or out the body but had moved during its passage through the body. He could not tell whether the fish-tailing was caused by the movement of the blade against the body or the movement of the body against the knife. The wound was 10-12cm deep. It had cut through a part of the large intestine, the small intestine, the root of the mesentery (which is the layer of fatty tissue that connects the small intestine to the back of the abdomen from whence it gets its blood supply). The knife also penetrated the aorta running along the spinal column, entering it and exiting on the other side and terminating in the muscle lying next to the spinal column. Dr Tan was of the opinion that only moderate force was required to cause the wound as there was nothing to resist the passage of the knife into that region of the stomach. He also testified that it would be virtually impossible to save a person who had suffered this kind of injury.

D From the position of the wound and the angle of entry of the knife, Dr Tan opined that if the two persons had faced each other directly, the assailant would have been holding the knife with his left hand in order to thrust it into the body. If he were holding the knife in his right hand, he would have to stand at an angle to the victim. If it was neither of these two positions, then the assailant would have to stand behind the victim. Dr Tan ruled out the third possibility because of the horizontal position of the track of the wound.

F There was no other or defensive wound on the deceased. When cross-examined, Dr Tan agreed that the lack of a defensive wound did not necessarily mean that the victim had been taken by surprise as it was possible that the victim could have been stabbed whilst the assailant and the victim were struggling with the knife. However, Dr Tan did not commit himself to a definite view as to whether the knife wound could have been caused during a struggle. In re-examination, he was also non-committal as regards this possibility since it depended on the relative position of the assailant and the victim during the struggle.

H At about 6.15 pm on the same day, the accused gave a statement under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Ed). The statement was taken down by Inspector Lee (PW11) through the interpretation of one Wong Shue Hong. The accused challenged the admissibility of this statement on the ground that it was not made voluntarily by the accused.

I In the trial within a trial which followed, the accused alleged that he had been stripped naked and left in that condition in his cell for about an hour before he was taken out of the cell for his statement to be taken. He also alleged that both his hands were handcuffed throughout the time he was giving his statement and that he gave it because he was frightened. He admitted that although he

had not been threatened by anyone he felt frightened. We did not believe the accused's testimony that he was left naked in his cell for about an hour or that both his hands were handcuffed in front when he was giving his statement. He gave conflicting versions as to when and how these events had occurred. We believed the evidence of the prosecution witnesses on these events. In any case, having regard to the whole of his testimony on this issue, we were of the view that these incidents, even if they occurred, did not detract from the voluntariness of his statement. The accused was not subject to any inducement, threat or promise when he gave his statement.

The accused also alleged that his statement was not accurate because certain things he had said to the interpreter had not been recorded. He had two major complaints. Firstly, he did not say that the deceased said that when the ship returned to Hongkong, the deceased would get someone to 'beat' the accused up. What the deceased had said was that he would get someone to 'fix' the accused up, ie to kill the accused. Secondly, he had told the interpreter that the deceased had challenged him to a fight on two occasions and had on one occasion taken out a knife to threaten him; that someone had prevented them from fighting; that the deceased had caught hold of the accused's hand (which was holding the knife) and that the deceased was stabbed during a struggle; that he did not know how the stabbing happened and that he had no intention to kill the deceased but had merely wanted to teach him a lesson.

The interpreter had died soon after the taking of the statement and therefore there was no other person to challenge the allegations of the accused except for Inspector Lee. The inspector testified that he took down the statement as interpreted by the interpreter and that the statement was read over and explained to the accused by the interpreter and that the accused did not want to amend or alter the statement. In so far as this part of the accused's testimony was concerned, we were prepared to give him the benefit of a doubt that he could have told the interpreter of the above matters. But we were of the view that those inaccuracies as such did not detract from the voluntariness of the statement.

Counsel for the accused also objected to the admissibility of the statement on the ground that there was a failure on the part of Inspector Lee to comply with the requirements of s 122(6) of the Criminal Procedure Code. It was argued that the interpreter had merely read out the charge word for word to the accused but had not explained it to him. Counsel contended that under s 122(6), not only the ingredients of the charge of murder but also the various defences to murder set out in the special exceptions to s 300 must be explained to the accused. Counsel referred to the decision of Chua J and Grimberg JC in *PP v Chan Sway Beng*¹ where their Lordships declined to admit the accused's cautioned statement on

A the ground that both the charge and the warning had not been explained to the accused who, in consequence, had not understood what was meant by 'defence' appearing in the warning. In that case, the accused had signed a statement that he understood the charge and the warning. Nevertheless their Lordships held he might well have thought he did when in fact he did not. Their Lordships in that case found as a fact that the charge and the warning had not been explained to the accused.

In the present case, the forms of the charge and the warning both contained statements signed by Inspector Lee, the interpreter and the accused that the charge and the warning had been read and explained to the accused by the interpreter and that the accused had understood. Inspector Lee in his testimony said he instructed the interpreter to read and explain both the charge and the warning to the accused. He admitted that he did not ask the interpreter to explain the charge of murder by reference to s 300 of the Penal Code or to explain any of the special exceptions to s 302 to the accused. The accused, in his testimony, said that he understood the charge to be one of murder under s 302 of the Penal Code. He did not say that the warning had not been explained to him or that he had not understood it.

Having regard to the evidence, we were satisfied that the charge and the warning had been read and explained to him and/or at any rate that he understood both the charge and the warning. For these reasons, we did not think that the decision in *PP v Chan Sway Beng*¹ was applicable to the present case. It was clear from the accused's own testimony that his real complaint was that certain parts of his cautioned statement had not been recorded accurately.

Accordingly, we ruled against the defence on this submission and admitted the cautioned statement of the accused as a voluntary statement, but without prejudice to the accused's position that that cautioned statement might be inaccurate in those respects alleged by the accused.

The cautioned statement was as follows:

H I admitted that I stab him (the deceased) with the knife because on four occasions the deceased threatened to ask someone to assault me when we return to Hong Kong. On the last occasion on 15 October 1985 at about 6.30 am, the deceased wanted to attack me with a knife but I ran away. Later, when I saw the deceased, he (the deceased) told me that he would certainly ask someone to beat me up when the ship return to Hong Kong. Some crew members heard what the deceased said. These incidents provoked me into stabbing the deceased. Therefore, on 15 October 1985 at about 11.20 am, I took a fruit knife from my room and met the deceased at the pantry. On seeing the deceased, I was so angry that I stabbed him (the deceased). I do not know where I stabbed him. It was the deceased who had driven me to do such thing to him. The deceased always complained to the chief steward that I did not do my work properly.

After the cautioned statement was admitted, counsel for the accused made a submission of no case to answer. We rejected the submission and called on the accused to enter upon his defence.

The accused elected to give evidence. His testimony was as follows. He was born and grew up in China where he had three years of primary education. He went to Hong Kong in 1962 where he worked at various jobs. In July 1985, he took a flight from Hong Kong to Sydney, Australia where he joined the 'Kilmun' as a steward. He met the deceased during the flight to Sydney. The deceased was also joining the 'Kilmun' as a second cook. At the beginning, his relationship with the deceased was normal. They even had drinks together in the following month. Subsequently, the relationship deteriorated when the deceased began to bully him. They had quarrels. They quarrelled on four occasions. The last occasion was on the day of the incident. The second last occasion was about 10-30 days before that day.

On 15 October 1985, he had woken up at 5.30 am. At 6 am, he went to the chief steward's cabin to wake him up. At about 6.15 am, the chief steward ordered sandwiches. The accused went to the galley to tell the deceased to prepare the sandwiches. He also told the deceased to fry some eggs and bacon but the deceased scolded him in a loud voice. The deceased told him he had no right to tell him what to do. They had a quarrel. Then the first engineer came into the pantry to inquire why the sandwiches were not ready. He scolded the accused. The accused then repeated to the deceased the order for sandwiches and another quarrel ensued. During this quarrel, the deceased took out a knife and chased him. The deceased was stopped by another crew member; the accused could not remember who he was. He, however, remembered the deceased saying that since he could not get the accused, he would still get people to fix him when the accused returned to Hong Kong.

The accused also remembered that whilst he and the deceased were quarrelling that morning, the chief steward had come in and told them to stop quarrelling. The chief steward said, 'Finish, no more.' The accused could not remember at what time the chief steward had intervened, but he thought it was between 7.30-9 am. After this, he went to clean up the living room of the captain's cabin. He then returned to the pantry to prepare vegetable salad. The deceased was then in the kitchen. The accused was in an angry mood as a result of the quarrels earlier and also because the deceased had picked on him several times even after they had shaken hands to forget their quarrels. He also remembered that the deceased had wanted to get someone to fix him up when they returned to Hong Kong.

After preparing the salad, the accused went back to his cabin where he drank some beer. He also repaired a loose buckle on his belt. He then took up a fruit knife

which had a blade of six inches and a handle of two inches. It was a single blade knife. He then used the knife to cut out from a cardboard carton a piece of cardboard with which he wrapped the knife. Subsequently, the accused left the cabin but he could not remember whether he brought the knife with him. He also could not remember whether from there he went back to the pantry or to the captain's cabin or downstairs to the store-room. Eventually, he went back to the pantry. He saw Sum Wai Man in the pantry. He could not remember whether the deceased was then in the pantry. He remembered that the deceased came into the pantry from the kitchen after 11 am. The accused then took out his knife from his right trouser pocket and shouted at the deceased, 'You have been bullying me.' Before he could stab the deceased, the latter caught hold of the accused's wrist. The accused had not expected the deceased to react so fast in catching hold of his wrist. They were facing each other. The deceased did not shout for help. The accused was holding the knife in a thrusting position. He was thrusting the knife at the deceased's body at waist level. He tried to free the deceased's hand on his wrist as he was afraid that the deceased would snatch the knife away and stab him with it. They struggled silently near the washing machine which was at the far end of the pantry next to the crew mess. The accused was stronger than the deceased. During the struggle, the knife was plunged into the deceased's abdomen.

After the deceased was stabbed, the accused walked out of the pantry. He testified that he did not see Yong at the door. When he reached the spot where the water cooler was, he heard Yong calling him from behind. He looked back. Yong then said to him in Cantonese, 'Aren't you going to run away fast.' In cross-examination, the accused denied that he had confused what he thought he had heard from Yong with what the deceased had said, ie 'please get help'. He also denied a suggestion that he had not said the words 'you have been bullying me' to the deceased before stabbing him.

Immediately after the incident, the accused went back to his cabin, carrying the knife with him. After a while he came out of his cabin and went outside to the portside deck of the ship. He then deposited the knife in a container on the deck. He then changed his mind by retrieving the knife and threw it into the sea. He then went back to his cabin.

With regard to the taking of the s 122(6) statement, the accused repeated his earlier evidence that the statement was inaccurate and that he had told the interpreter of the words he had spoken when he took out the knife and also of the struggle and that in the struggle he had stabbed the deceased because the latter was weaker than him.

Our assessment of the testimony of the accused was that he had difficulty in recalling the exact sequence of

events from 5.30 am to 11.20 am on 15 October 1985. He was, however, quite clear in his mind as to why he wanted to stab the deceased and how he stabbed the deceased. We reproduce below the accused's testimony in cross-examination:

Q: When you confronted the deceased with the knife in the pantry at about 11.20 am that morning, you were very angry, were you not?

A: Yes, my Lords.

Q: And you said earlier on that you wanted to teach him a lesson because he had been bullying you all this while?

A: Yes.

Q: You wanted to teach him a lesson by stabbing him with a knife?

A: Yes.

Chua J: You wanted to teach him a lesson by stabbing him?

A: Yes, my Lord.

Q: I put it to you, Mr Tsang, that you did not say anything to the deceased before you stabbed him?

A: I've said those things, otherwise I would not be so angry.

Q: I put it to you, Mr Tsang, that what you told Inspector Lee through Mr Wong, when you gave this statement on 15 October is correct, that is, you took a fruit knife from the room, met the deceased at the pantry and seeing the deceased, you were so angry that you stabbed him?

A: What about the part that the deceased would get someone to fix me?

Q: Mr Tsang, that's correct, the deceased had threatened you on four occasions before: that he would get someone to fix you when you went home in Hong Kong – that's correct, isn't it?

A: My Lords, beat me and fix me is different!

Q: Okay, Mr Tsang ...

A: A punch or a slap is beat but I will not die.

Q: Okay, Mr Tsang, forget about the statement. What actually happened was that the deceased had threatened to get people to fix you up on your return to Hong Kong – is that right?

A: My Lords, some were missed out and some were wrongly recorded. I have to point them out.

Q: No, answer my question, Mr Tsang. It's true that the deceased on four occasions threatened to get someone to fix you up when you returned to Hong Kong?

A: If it's written that way, that's correct, but it's in the statement that he would get someone to beat me.

Q: Mr Tsang, we are not talking about the statement now. We are talking of what actually happened – of what happened on the ship on 15 October. At 6.30 – now in the morning the deceased had threatened you with a knife – is that right?

A: Yes, my Lords.

Q: And he had threatened to get people to fix you up when you got back to Hong Kong?

A: Yes, my Lords.

A Q: And you were very angry for that?

A: Yes.

Q: And you wanted to teach him a lesson by stabbing him?

A: It was my intention but I didn't say it.

Chua J: Your intention was what?

B A: To teach him a lesson.

In his closing address, counsel for the accused submitted that the defence had created a reasonable doubt as to whether the accused had intended to kill the deceased or to cause him such bodily injury as was sufficient in the ordinary course of nature to cause death. It was contended that the act of stabbing the deceased in the stomach was not a voluntary (ie a deliberate) act as it had occurred during a struggle. Also, the accused had not intended to puncture the aorta, and if the aorta had not been punctured, the deceased would not have died. It was also contended that the accused had only stabbed the deceased once and that if he had intended to kill him, he would have inflicted more injuries.

We could not accept this submission. The accused had, in his own words, wanted to teach the deceased a lesson by stabbing him with a knife. He went to his cabin and brought the knife to the pantry in order to stab the deceased. The knife had a 6-inch blade. Where he had intended to stab the deceased, the accused did not say but still he intended to stab the deceased. As regards the accused's testimony that the stabbing occurred during the struggle, we were prepared to accept his evidence that there was some sort of struggle in the sense that the deceased had struggled with the accused for possession of the knife or to prevent the accused from stabbing the deceased. In our view, the deceased was taken by surprise and was unable to shout for help. Otherwise Yong, who was outside the pantry in the passage way would have heard something. In our view, the struggle did not make the stabbing an accident. The struggle occurred because the deceased was trying to prevent the accused from stabbing him. He failed to do so because he was weaker than the accused and he paid for it with his life. In our view, the stabbing was a calculated and deliberate act. Although only moderate force was required to cause the injuries that were actually caused to the deceased, the accused had intended to stab the deceased in a vulnerable part of the body. The accused admitted that he was thrusting the knife forward at the deceased at waist level. The stabbing was done with the intention of causing bodily injury to the deceased and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. In this respect, we applied the test laid down by a panel of this court, which test was approved by the Court of Criminal Appeal in *PP v Visuvanathan*² at p 161, col D-E.

The second submission of counsel for the defence was that the accused was deprived of the power of self-

control by grave and sudden provocation when he caused the death of the deceased who gave the provocation. The accused had testified that he became very angry with the deceased when, after that morning's quarrel with the deceased when the latter had chased him with a knife, he recalled how the deceased had bullied him, refused his friendship and threatened on many prior occasions to get someone to fix him when they returned to Hong Kong. He had also testified that he could not control himself.

We rejected this submission. The evidence showed that although he had been scolded, threatened and chased with a knife by the deceased that morning, the accused did not retaliate immediately as one would have expected if he had been so provoked as to lose his self-control. These events had occurred before 10 am. After the quarrel had been stopped by the chief steward, the accused resumed his normal work. Then he went back to his cabin and drank some beer. Whilst in the cabin, he repaired a loose buckle on his belt. Having decided to stab the deceased, he then put the fruit knife in his right trouser pocket. He did not go to the pantry directly but went either to the captain's cabin or the store-room. Then he went back to the pantry. When the deceased came in from the galley, the accused was ready to stab him with the knife. In other words, he waited for the deceased to come into the pantry so that he could stab him.

In our view, the accused did not behave as if he had been provoked. He did not lose his self-composure much less his self-control. Instead, he decided to teach the deceased a lesson. Counsel referred us to two Indian cases where the defence of provocation was successful in each case. These were *Saraj Din v Emperor*³ and *Des Raj v Emperor*.⁴ As each case depends on its own facts, we did not find these decisions useful in coming to our conclusion on the point of loss of self-control.

In our view, the accused had not discharged the burden of proving exception 1 to s 300 on a balance of probabilities.

The third submission of counsel for the defence was that exception 4 to s 300 was applicable in that the accused had killed the deceased without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel manner or unusual manner. We rejected this defence. In our view, the evidence showed that there was no sudden fight when the stabbing took place. The accused waited in the pantry for the deceased to appear in order to stab him. Furthermore, the accused took undue advantage of the deceased, who was then unarmed, by concealing a knife in his pocket and when the deceased came into the pantry, attacked him by surprise. With regard to this particular point of undue advantage, we relied on the manner in which the

A Privy Council dealt with such defence in *Mohamed Kunjo v PP*⁵ at p 54 in the following passage:

B In the present case there was evidence that suggested strongly the absence of any element of design or planning. There was also evidence that the blow, or blows, were struck 'in a sudden fight in the heat of passion upon a sudden quarrel', though there was also evidence (ie going in search of the weapon, returning with it, and striking the deceased when he appeared to be neither aggressive nor on his guard) which suggested the contrary. But formidable difficulties face the appellant when he attempts to show that the act causing death was committed 'without the offender having taken undue advantage or acted in a cruel or unusual manner'.
C The appellant, who had been engaged in a fight with the deceased, ran to get a weapon and returned to attack the defenceless deceased with a truly murderous weapon, the exhaust pipe, a photograph of which we have seen. The evidence of the assault shows that the deceased was taken by surprise and attacked with a very unusual and unexpected weapon, a heavy blow on the head from which could reasonably be expected to be lethal. In one of the Indian cases to which we were most helpfully referred, *Sarjug Prasad v The State* AIR 1959 Patna 66, K Sahai J commented that 'undue advantage ... means unfair advantage'. In the face of the evidence, we do not see how the appellant could prove that he had not taken undue advantage or acted in a cruel or unusual manner.

D For the reasons set out above, we found that the prosecution had proved beyond a reasonable doubt under s 300(c) of the Penal Code that the accused had intended to stab the deceased in the stomach and that the injury intended was sufficient in the ordinary course of nature to cause death. Accordingly, we convicted him.

E Order accordingly.

Solicitors: *Thomas Chan & Co.*

Reported by *Prof Ahmad Ibrahim*

G

Development Bank of Singapore Ltd v Yeap Teik Leong & Ors

H HIGH COURT (SINGAPORE) – SUIT NO 1467 OF 1987
CHAO HICK TIN JC
15 SEPTEMBER 1988

Banking – Guarantee – Not all directors of company signed guarantee – Whether there was breach of representation by plaintiff bank that all directors would be required to execute guarantee – Modification to terms of loan after signing of guarantee – Whether valid

I *Contract – Guarantee – Not all directors of company signed guarantee – Whether there was breach of representation by plaintiff bank that all directors would be required to execute guarantee – Modification to terms of loan after signing of guarantee – Whether valid*

R Company sought loans from the plaintiff bank to finance an Urban Redevelopment Authority ('URA') project that the com-